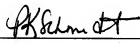


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<b>PRE-APPEAL BRIEF REQUEST FOR REVIEW</b>		Docket Number (Optional) <b>3712174-00567</b>	
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]  on _____  Signature _____  Typed or printed name _____		Application Number <b>10/596,902</b>	Filed <b>August 29, 2006</b>
		First Named Inventor <b>Satoshi Tsujii</b>	
		Art Unit <b>2484</b>	Examiner <b>Nigar Chowdhury</b>
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s).          Note: No more than five (5) pages may be provided.</p>			
I am the  <input type="checkbox"/> applicant/inventor.  <input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)  <input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>46,446</u>  <input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____		<div style="text-align: center;">             Signature  <b>Patricia Kane Schmidt</b>            Typed or printed name  <b>312-807-4363</b>            Telephone number  <b>June 17, 2011</b>            Date         </div>	
NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.			
<input type="checkbox"/> *Total of _____ forms are submitted.			

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant: Tsujii, et al.  
Appl. No.: 10/596,902  
Conf. No.: 1992  
Filed: August 29, 2006  
Title: FILE RECORDING APPARATUS, FILE RECORDING METHOD, PROGRAM  
OF FILE RECORDING PROCESS, STORAGE MEDIUM IN WHICH A  
PROGRAM OF FILE RECORDING PROCESSING IS STORED, FILE  
PLAYBACK APPARATUS, FILE PLAYBACK METHOD, AND PROGRAM  
OF FILE PLAYBACK PROCESS  
Art Unit: 2484  
Examiner: Nigar Chowdhury  
Docket No.: 3712174-00567

Mail Stop AF  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

Sir:

This Request is submitted in reply to the Final Office Action dated February 17, 2011 ("Final Office Action") and the Advisory Action dated May 12, 2011 ("Advisory Action"), and is filed contemporaneously with form PTO/SB/33, "Pre-Appeal Brief Request for Review," form PTO/SB/31, "Notice of Appeal," and a petition for a one-month extension of time. Applicant believes that the Examiner's rejections in the Final Office Action rise to the level of clear error and make the case proper for pre-appeal review. Please charge deposit account No. 02-1818 for any fees due in connection with this Request.

Claims 1 to 7, 9 to 11, and 13 are pending. Claims 8 and 12 were previously canceled without prejudice or disclaimer. For at least the reasons set forth below, Applicant respectfully submits that the rejections should be withdrawn.

The Final Office Action rejected Claims 1 to 7, 9 to 11, and 13 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 7,757,240 to Miller et al. ("*Miller*"). Applicant respectfully submits that these rejections rise to the level of clear error because *Miller* fails to disclose or suggest each element of independent Claims 1, 7, 9 to 11 and 13.

Independent Claim 1 includes, in part, "a memory device storing instructions which when executed by the processor, cause the processor to, in the first block of real data management information, form a first alternate track including video data equivalent to video data obtained by

performing a process according to the effect track, *the first alternate track being used in response to the effect track being unprocessable.*" (Emphasis added.)

Miller discloses a matrix switch which allows multiple inputs to be directed to multiple outputs. (Miller, column 13, lines 33 to 35.) The inputs may be coupled to media content sources. (Id., Abstract.) In the multi-media matrix switch example of Miller, a primary output of the matrix switch is a data stream that defines an editing project created by a user. (Id., column 13, lines 50 to 53.) To create the editing project, the user can select from a number of different multimedia clips or tracks A, B, and C, which can be assembled into a unique presentation. (Id., column 13, lines 64 to 66; Fig 9.)

To support the proposition that Miller discloses "a memory device storing instructions which when executed by the processor, cause the processor to, in the first block of real data management information, form a first alternate track including video data equivalent to video data obtained by performing a process according to the effect track, the first alternate track being used in response to the effect track being unprocessable," the Final Office Action relied on tracks A, B, and C in Miller, and stated that alternate track B or C is used in response to track A being unprocessable:

Furthermore, Miller et al. discloses a first alternate track, for example, in fig. 21, a alternate track is 'B' which includes video data and being used in response to the track 'A' which being unprocessable. The priority level of the source A, B, and C, starting with lowest priority source from A to C. Source A has low priority than source B and C. Therefore, the first alternate track is meet by the source B or C including video data equivalent to video data obtained by performing a priority process, wherein, the first alternate track B or C being used in response to the effect track A being unprocessable.

(Final Office Action, p. 3.) In the Response to Final Office Action dated April 18, 2011 ("Response to Final Office Action"), Applicant explained that the Examiner failed to specifically allege how or why track A is unprocessable. The Examiner stated that "Source A has low priority than source B and C," but as Applicant explained in the Response to Final Office Action, Miller fails to disclose that low priority means a track is unprocessable.

Instead, Miller explains that "priority" deals with how objects in a data structure "compet[e] for the primary output of the matrix switch." (Miller, 19:65-67.) Priority also affects how sources in a data structure are placed in a hierarchical tree that represents a project. (Id., 16:17-30.) Priority in Miller does not, however, mean a track is unprocessable. Applicant

respectfully submits that the Examiner's reliance on the priority in *Miller* rises to the level of clear error.

Indeed, Applicant explained in the Response to Final Office Action that *Miller* fails to disclose even determining whether any of the multimedia clips or tracks are unprocessable. In fact, Applicant noted that tracks A, B, and C in *Miller* are processable:

In this particular processing example [involving tracks A, B, and C], a rule is defined that *sources on tracks are processed before transitions on the tracks are processed* because transitions operate on two objects that are beneath them.

(*Id.*, 17:29-32) (emphasis added). Nowhere does *Miller* disclose that an effect track may be unprocessable, nor does *Miller* disclose what occurs in response to the effect track being unprocessable.

In response to the Applicant's remarks in the Response to Final Office Action, the Examiner in the Advisory Action again states that alternate track B or C is used in response to track A being unprocessable:

Furthermore, Miller et al. discloses a first alternate track, for example, in fig. 21, a alternate track is 'B' which includes video data and being used in response to the track 'A' which being unprocessable. *Source 'A' doesn't have any transition object to change between two or more sources or any effect object video stream presentation format. We can broadly interpret 'unprocessable' as which is not process by adding any transition object or any effect object.* The priority level of the source A, B, and C, starting with lowest priority source from A to C. Source A has low priority than source B and C. Therefore, the first alternate track is meet by the source B or C including video data equivalent to video data obtained by performing a priority process, wherein, the first alternate track B or C being used in response to the effect track A being unprocessable.

(Advisory Action, p. 3) (emphasis added). The Examiner again relies on the priority in *Miller* as disclosing that track A is unprocessable. As explained above, the Examiner's reliance on this priority in *Miller* rises to the level of clear error.

Additionally, it appears that the Examiner broadly interprets “unprocessable” as including something which is *not* processed by adding transition or effect objects. However, M.P.E.P. § 2111 states:

During patent examination, the *pending claims must be ‘given their broadest reasonable interpretation consistent with the specification.’* The Federal Circuit’s *en banc* decision in *Phillips v. AWH Corp.* expressly recognized that the USPTO employs the ‘broadest reasonable interpretation’ standard:

The Patent and Trademark Office (“PTO”) determines the scope of claims in patent applications not solely on the basis of the claim language, but upon *giving claims their broadest reasonable construction ‘in light of the specification as it would be interpreted by one of ordinary skill in the art.’*

(Emphasis added) (internal citations omitted). In the present application, there is no support in the specification for interpreting “unprocessable” as something which is not processed by adding transition or effect objects. The Examiner has provided no such support from the specification, nor any reason as to why a person of ordinary skill would interpret “unprocessable” as unprocessed. Therefore, Applicant respectfully submits that the Examiner’s failure to provide any specification support for such a broad interpretation rises to the level of clear error.

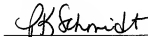
Additionally, Applicant respectfully notes that even if the Examiner’s broad interpretation of “unprocessable” is not clear error, the Examiner’s statement that “Source ‘A’ doesn’t have any transition object to change between two or more sources or any effect object video stream presentation format” is clear error. As best understood, the Examiner states that no transition object or effect object is applied to source A. To the contrary, *Miller* discloses that “source A is obscured by source B.” (*Miller*, 14:40-42.) *Miller* also discloses that a project “includes a source A, and a transition between source A and composition 2902.” (*Id.*, 22:31-33.) Therefore, Applicant respectfully submits that the Examiner’s statement about source A not having any transition or effect object is a clear factual error in the Examiner’s rejections.

Accordingly, Applicant respectfully requests that the rejection of Claims 1 to 7, 9 to 11, and 13 under 35 U.S.C. § 102(e) to *Miller* be withdrawn. For the foregoing reasons, Applicant respectfully submits that the present application is in condition for allowance and earnestly solicits reconsideration of same.

Respectfully submitted,

K&L GATES LLP

BY:



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Customer No. 29175

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Dated:

6-17-11